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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

4 v.

13 Cr. 485 (CM)

5 FAOUZI JABER,

6 Defendant.

7 -----x
8 July 25, 2017
9 1:00 p.m.

10 Before:

11 HON. KATHARINE H. PARKER,

12 Magistrate Judge

13 APPEARANCES

14 JOON H. KIM
15 Acting United States Attorney for the
16 Southern District of New York

17 GEORGE D. TURNER
18 Assistant United States Attorney

19 FEDERAL DEFENDERS OF NEW YORK
20 Attorneys for Defendant
21 SABRINA P. SHROFF

22 Also present: MARWAN ABDEL-RAHMAN, Arabic language interpreter
23
24
25

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1 (Case called)

2 THE COURT: Good afternoon. Will counsel please state
3 their appearances for the record.

4 MR. TURNER: Good afternoon, your Honor. George
5 Turner for the government.

6 THE COURT: Good afternoon.

7 MS. SHROFF: Good afternoon, your Honor. On behalf of
8 Mr. Jaber, who is seated to my right, Federal Defenders of New
9 York, by Sabrina Shroff.

10 THE COURT: Good afternoon.

11 Good afternoon, Mr. Jaber.

12 THE DEFENDANT: Good afternoon.

13 THE COURT: I am Judge Parker, and I understand your
14 primary language is Arabic. We have an Arabic interpreter here
15 today. Are you able to hear and understand the interpreter?

16 THE DEFENDANT: I can hear you without the headset.

17 THE COURT: OK.

18 THE INTERPRETER: Your Honor, could we have a minute
19 to take care of the equipment?

20 THE COURT: All right.

21 THE DEFENDANT: I can hear you.

22 THE COURT: So we have now corrected the headset, and
23 you can now hear the interpreter clearly; is that right?

24 THE DEFENDANT: Yes.

25 THE COURT: Mr. Jaber, I understand you wish to plead

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1 guilty to Count Three of the indictment against you, which
2 charges you with conspiracy to provide material support or
3 resources to a foreign terrorist organization, in violation of
4 Title 18 of the United States Code, Section 2339B; is that
5 right?

6 THE DEFENDANT: Yes.

7 THE COURT: Before we get started, I am going to ask
8 the courtroom deputy to place you under oath.

9 Could you please stand.

10 (Defendant sworn)

11 THE COURT: You have now been placed under oath. This
12 means that any statements you make here may be used against you
13 by the government in a prosecution for perjury or for making
14 false statements.

15 Do you understand this?

16 THE DEFENDANT: Yes.

17 THE COURT: Do you understand that giving false
18 testimony here today is itself a federal crime?

19 THE DEFENDANT: Yes.

20 THE COURT: I have before me a consent to proceed
21 before a United States magistrate judge on a felony plea
22 allocution that you have signed.

23 What this form says is that you know you have the
24 right to have your plea taken by a United States district
25 judge, but you are agreeing to have the plea taken by a United

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1 States magistrate judge, such as myself.

2 As a magistrate judge, I have the authority to take
3 your plea, with your consent, and you will still be entitled to
4 all of the same rights and protections as if you were before a
5 district judge; and, among other things, if you are found
6 guilty, you will be sentenced by a district judge.

7 Before you signed this form, did your lawyer explain
8 it to you with the aid of an interpreter?

9 THE DEFENDANT: Yes.

10 THE COURT: Did you sign this form voluntarily?

11 THE DEFENDANT: Yes.

12 THE COURT: Do you still wish to proceed with your
13 plea before a United States magistrate judge today?

14 THE DEFENDANT: Yes.

15 THE COURT: Your consent is accepted.

16 I would like to explain a little bit more about the
17 proceeding today.

18 I am going to ask you various questions, some are
19 personal in nature and others are about the crime to which you
20 wish to plead guilty.

21 I am also going to review various rights you have and
22 will be giving up by pleading guilty.

23 The purpose of these questions is to make sure that
24 you understand your rights and to make sure that you are
25 voluntarily pleading guilty of your own free will and because

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1 you are in fact guilty of the crime set forth in Count Three of
2 the indictment and not for some other reason.

3 Do you understand what I have said?

4 THE DEFENDANT: Yes.

5 THE COURT: If you don't understand any of my
6 questions, or if you want at any time to consult with your
7 lawyer, please say so, and we will stop and permit you time so
8 that we can clarify or explain the question. It's important
9 that you understand every question before you answer it.

10 THE DEFENDANT: Yes.

11 THE COURT: What is your full name?

12 THE DEFENDANT: Faouzi Abdulnehum Jaber.

13 THE COURT: Mr. Jaber, how old are you?

14 THE DEFENDANT: After 11 days I will turn 62 and start
15 my 63rd year.

16 THE COURT: Are you a United States citizen?

17 THE DEFENDANT: No.

18 THE COURT: I ask this question because pleading
19 guilty can have serious immigration consequences for those who
20 are not United States citizens.

21 Can you read and write in Arabic?

22 THE DEFENDANT: Yes.

23 THE COURT: How far did you go in school?

24 THE DEFENDANT: Second year in high school.

25 THE COURT: Are you currently or have you recently

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1 been under the care of a doctor, psychiatrist or psychologist
2 for any reason?

3 THE DEFENDANT: I'm constantly under the care of
4 medical doctors and psychiatrists.

5 MS. SHROFF: Your Honor, may I just interrupt and give
6 to the Court the medications, in case you want it, or I can
7 give it to the court reporter. Mr. Jaber is on a slew of
8 medications.

9 THE COURT: Yes. I would like to understand what
10 medications they are and whether they impact his ability to
11 understand the proceedings today.

12 MS. SHROFF: So may I answer the first question and
13 the second one he can?

14 THE COURT: Yes.

15 MS. SHROFF: He takes medication for blood pressure,
16 heart medication and prostate issues.

17 He gets 5 milligrams of amlodipine once a day.

18 He gets 5 milligrams of lisinopril twice a day.

19 He gets 10.4 milligrams three times a day of something
20 called tamsulosin.

21 He gets 10 milligrams of isosorbide twice a day.

22 He gets 81 milligrams of aspirin, as I understand it,
23 six times a day.

24 He gets 10 milligrams of atorvastatin.

25 He gets 75 milligrams of clopidogrel bisulfate. I

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1 believe he gets that twice a day.

2 Then he also gets 0.4 milligrams of nitroglycerin.

3 Then he gets 25 milligrams of atenolol.

4 THE COURT: Will counsel please hand that up to me for
5 the record so I can just read that.

6 MS. SHROFF: Sure.

7 THE COURT: Mr. Jaber, the medications that you are
8 taking are for blood pressure, heart problems, and prostate
9 problems; is that correct?

10 THE DEFENDANT: Yes.

11 THE COURT: Are they for any other medical condition?

12 THE DEFENDANT: No, just those. And I have been
13 taking them all my life, all my life.

14 THE COURT: Do any of these medications, alone or in
15 combination, interfere with your ability to comprehend what is
16 going on at today's proceeding?

17 THE DEFENDANT: No. I'm comprehending everything.

18 THE COURT: Thank you.

19 Do you have any condition that affects your ability to
20 see or hear?

21 THE DEFENDANT: Yes. I have some difficulty hearing,
22 and I am nearsighted.

23 THE COURT: I see that you are wearing glasses. You
24 can see what is going on in this proceeding today; is that
25 correct?

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1 THE DEFENDANT: This is a result of high blood
2 pressure.

3 THE COURT: But you can see what is going on at
4 today's proceeding; is that right?

5 THE DEFENDANT: Yes.

6 THE COURT: And notwithstanding your hearing problems,
7 are you able to hear clearly what is going on in today's
8 proceeding?

9 THE DEFENDANT: Yes.

10 THE COURT: Do you have any condition that affects
11 your ability to think, to understand, or to make judgments or
12 decisions on your own behalf?

13 THE DEFENDANT: No. Today I'm fine, but some days I
14 do have problems.

15 THE COURT: What is the nature of the problem that you
16 have in thinking or understanding?

17 THE DEFENDANT: When I'm upset.

18 THE COURT: Is this related to any medical condition?

19 THE DEFENDANT: No, no.

20 THE COURT: So are you able to understand this
21 proceeding, what we are talking about here?

22 THE DEFENDANT: Yes, very well.

23 THE COURT: Is your mind clear today?

24 THE DEFENDANT: Very much so.

25 THE COURT: You understand what is happening in this

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1 proceeding today?

2 THE DEFENDANT: Yes.

3 THE COURT: Have you ever been hospitalized for any
4 mental illness?

5 THE DEFENDANT: Yes, in Lebanon.

6 THE COURT: What kind of mental illness were you
7 hospitalized for?

8 THE DEFENDANT: Family problems and infidelity,
9 marriage infidelity.

10 THE COURT: Were you given a psychiatric diagnosis?

11 THE DEFENDANT: Yes.

12 THE COURT: What was that diagnosis?

13 THE DEFENDANT: My attorney is going to receive a full
14 report within a couple of days that will be mailed to her.

15 MS. SHROFF: He was previously diagnosed with
16 depression; he received treatment for depression and it was a
17 while ago.

18 THE COURT: I was just going to ask, Mr. Jaber, when
19 was this treatment that you received?

20 THE DEFENDANT: Between 1993 and 2013.

21 THE COURT: Was that treatment helpful to you?

22 THE DEFENDANT: Yeah, well.

23 THE COURT: Did you conclude treatment for that mental
24 condition?

25 THE DEFENDANT: My mental problems caused me heart

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1 problems and other medical problems.

2 MS. SHROFF: Your Honor, may I just have a second?

3 THE COURT: Yes.

4 (Pause)

5 MS. SHROFF: Thank you, your Honor.

6 THE COURT: Mr. Jaber, what I am trying to determine
7 is whether or not you had or have any mental illness that would
8 prevent you from understanding the nature of today's proceeding
9 and understanding what you are doing here today.

10 Your prior diagnosis for any mental illness, does that
11 prevent you from understanding what is happening today?

12 THE DEFENDANT: Today I understand 100 percent
13 everything that has been taking place.

14 THE COURT: Have you ever been treated for drug or
15 alcohol addiction?

16 THE DEFENDANT: Yes.

17 THE COURT: Are you presently, as you sit here today,
18 under the influence of any mind-altering drug or alcohol?

19 THE DEFENDANT: No. Today I'm fine.

20 THE COURT: Does the government have any objections to
21 Mr. Jaber's competence to plead at this time?

22 MR. TURNER: No, your Honor.

23 THE COURT: Ms. Shroff, do you have any objections or
24 concerns about your client's competence to plead at this time?

25 MS. SHROFF: No, your Honor.

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1 THE COURT: Mr. Jaber, have you seen a copy of the
2 indictment that contains the charges against you?

3 THE DEFENDANT: Yes.

4 THE COURT: Have you read it with the assistance of an
5 interpreter?

6 THE DEFENDANT: Yes.

7 THE COURT: Have you had the opportunity to review the
8 indictment with your attorney?

9 THE DEFENDANT: Yes.

10 THE COURT: Do you understand what the indictment says
11 that you did?

12 THE DEFENDANT: Yes.

13 THE COURT: Have you had enough time to talk with your
14 attorney about your case and how you wish to plead?

15 THE DEFENDANT: Yes. And my attorney has been taking
16 good care of me.

17 THE COURT: I was just going to ask you if you are
18 satisfied with your attorney's representation. Are you?

19 THE DEFENDANT: Very much so.

20 THE COURT: Has your counsel told you the consequences
21 of pleading guilty, including any immigration consequences?

22 THE DEFENDANT: Yes.

23 THE COURT: I am now going to explain certain
24 constitutional rights that you have. These are rights that you
25 will be giving up if you enter a plea of guilty. Please listen

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1 carefully to what I am about to say, and again, if you don't
2 understand something, stop me, and I will explain it more
3 fully. OK?

4 THE DEFENDANT: Yes.

5 THE COURT: Under the Constitution and laws of the
6 United States, you have a right to plead not guilty to the
7 charges contained in the indictment.

8 Do you understand this?

9 THE DEFENDANT: Yes.

10 THE COURT: If you pled not guilty, you would be
11 entitled under the Constitution to a speedy and public trial by
12 a jury of those charges.

13 At that trial, you would be presumed innocent and the
14 government would be required to prove you guilty beyond a
15 reasonable doubt before you could be found guilty, and you
16 could not be convicted unless a jury of 12 people agreed
17 unanimously that you are guilty beyond a reasonable doubt.

18 Do you understand this?

19 THE DEFENDANT: Yes.

20 THE COURT: If you decided to go to trial, at the
21 trial and at every stage of your case, you would have the right
22 to be represented by an attorney, and if you could not afford
23 one, an attorney would be appointed to represent you at the
24 government's expense. Even if you retained private defense
25 counsel, if you ran out of money, an attorney would be

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1 appointed to continue to represent you. You would be entitled
2 to an attorney all the way through trial and not just for a
3 guilty plea. So your decision to plead guilty should not
4 depend on whether you can afford to hire an attorney.

5 Do you understand this?

6 THE DEFENDANT: Yes.

7 THE COURT: During a trial, the witnesses for the
8 prosecution would have to come to court and testify in your
9 presence, where you could see and hear them, and your lawyer
10 could cross-examine those witnesses. If you wanted, your
11 lawyer could offer evidence on your behalf. You would be able
12 to use the court's power to compel witnesses to come to court
13 to testify in your defense even if they did not want to come.

14 Do you understand this?

15 THE DEFENDANT: Yes.

16 THE COURT: At a trial, you would have the right to
17 testify in your own defense, if you wanted to. But you would
18 also have the right not to testify, and if you chose not to
19 testify, that could not be used against you in any way. No
20 inference or suggestion of guilt would be permitted from the
21 fact that you did not testify.

22 Do you understand this?

23 THE DEFENDANT: Yes.

24 THE COURT: If you were convicted at trial, you would
25 have the right to appeal that verdict to a higher court.

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1 Do you understand this?

2 THE DEFENDANT: Yes.

3 THE COURT: As I said before, you have the right to
4 plead not guilty. Even right now, even as you sit here today
5 for purposes of entering your guilty plea, you have the right
6 to change your mind, persist in your not guilty plea and go to
7 trial. But if you do plead guilty, and if the court accepts
8 your plea, you will give up the right to a trial and to all the
9 other rights that go with it that I have just described.

10 If you plead guilty, there will be no jury trial. All
11 that will remain to be done will be to impose a sentence. You
12 and the government will have a chance to make arguments about
13 what sentence you should get, but there will not be any further
14 trial to determine if you are guilty or not guilty of the
15 charges to which you pled guilty.

16 Do you understand what I have just said?

17 THE DEFENDANT: Yes.

18 THE COURT: Do you understand the decision as to the
19 appropriate sentence in your case will be entirely up to the
20 sentencing judge, and that's Judge McMahon, and that she will
21 be limited only by what the law requires?

22 Do you understand this?

23 THE DEFENDANT: Yes.

24 THE COURT: So this means that even if you are
25 surprised or disappointed by your sentence, you will still be

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1 bound by your guilty plea and you will not be able to withdraw
2 it.

3 Do you understand?

4 THE DEFENDANT: Yes.

5 THE COURT: Finally, if you do plead guilty, you are
6 also giving up the right not to incriminate yourself, and I
7 will ask you questions in a moment about what you did in order
8 to satisfy myself that you are actually guilty. By pleading
9 guilty, you will be admitting to your factual as well as your
10 legal guilt.

11 Do you understand this?

12 THE DEFENDANT: Yes.

13 THE COURT: I am now going to review the charges
14 against you and review the consequences of pleading guilty.

15 Count Three of the indictment charges that you
16 conspired with others to provide material support or resources
17 to a foreign terrorist organization, the Fuerzas Armadas
18 Revolucionarias de Colombia, the FARC, in violation of Title 18
19 of the United States Code, Section 2339B.

20 I am going to ask the government, Mr. Turner, to state
21 the elements of this charge. The elements are the things that
22 the government would have to prove beyond a reasonable doubt if
23 you went to trial.

24 Mr. Turner.

25 MR. TURNER: Yes, your Honor.

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1 The elements of the offense charged in Count Three of
2 the superseding indictment are:

3 First, that the defendant entered into an agreement to
4 provide material support or resources to a designated foreign
5 terrorist organization;

6 Second, that the defendant knew that the organization
7 was designated as a foreign terrorist organization, or that the
8 organization had engaged or was engaging in terrorist activity
9 or terrorism; and

10 Third, that at least one of the jurisdictional
11 requirements, which are set forth in subsection (d) of Section
12 2339B, is met.

13 The government would also be required to establish
14 venue in the Southern District of New York by a preponderance
15 of the evidence.

16 THE COURT: Thank you.

17 Mr. Jaber, I am now going to tell you the maximum
18 possible penalties you face by pleading guilty to Count Three
19 of the indictment. The maximum means the most that could
20 possibly be imposed. It does not mean that is what you
21 necessarily would receive, but by pleading guilty, you are
22 exposing yourself to the possibility of receiving any
23 combination of punishments up to the maximum that I am about to
24 describe.

25 Do you understand?

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1 THE DEFENDANT: Yes.

2 THE COURT: The maximum term of imprisonment for the
3 crime charged in Count Three is 15 years, which could be
4 followed by up to a lifetime of supervised release.

5 Supervised release means that after you are released
6 from prison, you may be subject to the supervision of the
7 probation department. If you are placed on supervised release
8 and thereafter violate any condition of that supervised
9 release, the district judge can revoke the term of supervised
10 release previously imposed and return you to prison without
11 giving you any credit for time previously served on
12 post-release supervision.

13 In addition to these restrictions on your liberty, the
14 maximum possible punishment for the crime charged in Count
15 Three also includes financial penalties.

16 The maximum allowable fine is \$250,000, twice the
17 gross pecuniary gain derived from the offense or twice the
18 gross pecuniary loss to persons other than the defendant as a
19 result of the offense, whichever is greatest.

20 The court also has authority to require you to pay
21 restitution to any victims of the crime in an amount the court
22 decides is required to compensate them for any injuries.

23 In addition, by pleading guilty, you will admit to the
24 forfeiture allegations in the indictment and agree to forfeit
25 any and all monetary proceeds you obtained from the crime to

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1 which you plead guilty, as well as any property used or
2 intended to be used in connection with the crime. Forfeiture
3 of this money and property is in addition to any fine,
4 restitution, cost of imprisonment, or other penalty the court
5 may impose upon you.

6 Finally, the court is required to impose a mandatory
7 special assessment, or fine, of \$100.

8 Because you are not a citizen of the United States,
9 your guilty plea may also have adverse consequences for your
10 ability to remain in or return to the United States, including
11 removal, deportation, denial of citizenship, and denial of
12 admission to the United States in the future.

13 Do you understand that your removal or deportation may
14 be mandatory?

15 THE DEFENDANT: Yes.

16 THE COURT: If that does happen, you will still be
17 bound by your guilty plea, that is, you will not be able to
18 withdraw it, regardless of any advice you have received from
19 your counsel or others regarding the immigration consequences
20 of your plea.

21 Do you understand this?

22 THE DEFENDANT: Yes.

23 THE COURT: Do you understand the charges against you
24 and the consequences of pleading guilty?

25 THE DEFENDANT: Yes.

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1 THE COURT: Do you understand that if you enter a
2 guilty plea, you will not be able to withdraw this plea, and
3 the only remaining step in the case will be sentencing?

4 THE DEFENDANT: Yes. Someone who admits guilt will
5 never repeat it.

6 THE COURT: I am glad that you are agreeing that you
7 won't repeat any criminal activity.

8 Do you understand that the decision as to the
9 appropriate sentence will be entirely up to the sentencing
10 judge and that she will be limited by only what the law
11 requires?

12 THE DEFENDANT: Yes.

13 THE COURT: Do you understand that even if you are
14 surprised or disappointed by your sentence, you will still be
15 bound by your guilty plea?

16 THE DEFENDANT: I would like to elaborate a bit on
17 answering this question.

18 I had requested to be deported from Prague and handed
19 to the American authorities so that I could admit my guilt. I
20 was the only defendant who requested to be deported here, and
21 that would be found in the discovery; there will be a letter to
22 that effect in the discovery. I never evaded acceptance of
23 responsibility because I had never committed a crime in the
24 past and will never commit a crime in the future.

25 (Pause)

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1 MS. SHROFF: Thank you, your Honor.

2 THE COURT: Has anyone threatened you or coerced you
3 in any way or tried to get you to plead guilty?

4 THE DEFENDANT: No.

5 THE COURT: Now, I understand that there is a written
6 plea agreement.

7 I have the original plea agreement that you signed,
8 Mr. Jaber. Did you read this agreement before you signed it?

9 THE DEFENDANT: Yes.

10 THE COURT: Did you have the aid of an interpreter
11 when reviewing the agreement?

12 THE DEFENDANT: Yes.

13 THE COURT: Do you understand its terms?

14 THE DEFENDANT: Yes.

15 THE COURT: Did you discuss it with your attorney
16 before you signed it?

17 THE DEFENDANT: Yes.

18 THE COURT: Did your attorney explain to you all of
19 the terms and conditions of the plea agreement with the aid of
20 interpretation?

21 THE DEFENDANT: Yes.

22 THE COURT: Apart from what is contained in the plea
23 agreement, have any promises been made to you in order to get
24 you to plead guilty?

25 THE DEFENDANT: No.

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1 THE COURT: Now, it appears that the government and
2 you have reached an agreement regarding the appropriate
3 calculation of your sentence under a part of the United States
4 law known as the sentencing guidelines. The plea agreement is
5 that the appropriate guideline sentencing range is 180 months
6 of imprisonment and a fine range of \$25,000 to \$250,000.

7 Do you understand this?

8 THE DEFENDANT: Yes.

9 THE COURT: Under the plea agreement, neither you nor
10 the government is allowed to argue to the sentencing judge for
11 a calculation that is different from the one in the plea
12 agreement. But I must advise you that the court is not bound
13 by the recommendations and calculations in the plea agreement
14 and that the district judge will be free to do, and in fact is
15 obliged to do, her own calculation of the appropriate
16 sentencing range in your case, which may result in a sentencing
17 range that differs from the one in the plea agreement.

18 Do you understand what I have just said?

19 THE DEFENDANT: Yes.

20 THE COURT: Do you understand that the district judge
21 may reject the recommendations of the prosecutor and
22 calculations in the plea agreement and could impose a more
23 severe sentence than you expect, without permitting you to
24 withdraw your plea of guilty?

25 THE DEFENDANT: Yes.

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1 THE COURT: In determining the appropriate sentence,
2 the district judge will consider the sentencing guidelines,
3 possible departures under those guidelines, and the factors set
4 forth in Title 18 of the United States Code, 3553(a).

5 In addition, the court will consider a presentence
6 report prepared by the probation department in advance of your
7 sentencing. Before you are sentenced, you and the government
8 will have an opportunity to challenge the facts in the
9 probation report.

10 Ultimately, the district judge will determine the
11 sentence for you, based on all of the factors I have explained,
12 and it may be more severe, as I said, than you expect, but you
13 will still not be able to withdraw your guilty plea.

14 Do you understand this?

15 THE DEFENDANT: Yes.

16 THE COURT: Do you understand that under the terms of
17 the plea agreement, as long as the district judge sentences you
18 to a prison term of no longer than 180 months, you are giving
19 up your right to challenge your sentence, whether by direct
20 appeal, collateral attack, writ of habeas corpus or otherwise?

21 THE DEFENDANT: Yes.

22 THE COURT: Do you understand that you are giving up
23 your right to challenge any term of supervised release imposed
24 by the court up to the lifetime maximum I told you about
25 earlier, whether by direct appeal, collateral attack, writ of

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1 habeas corpus or otherwise?

2 THE DEFENDANT: Yes.

3 THE COURT: Do you understand that the plea agreement
4 says that you cannot appeal any fine of \$250,000 or less, and
5 that you cannot appeal any order of forfeiture or restitution,
6 whether by direct appeal, collateral attack, habeas corpus or
7 otherwise?

8 THE DEFENDANT: Yes.

9 THE COURT: Under the plea agreement, the U.S.
10 attorney is agreeing that it will not prosecute you further
11 criminally, except for criminal tax violations, for
12 participation in a conspiracy, as charged in Count Three of the
13 indictment. However, the plea agreement does not bar the
14 government from using factual information about your conduct as
15 a predicate act or on the basis for a sentencing enhancement in
16 a subsequent prosecution.

17 In addition, at the time of sentencing, the government
18 will move to dismiss any open counts against you. In return,
19 you are agreeing, with respect to any and all dismissed
20 charges, that you are not a prevailing party, within the
21 meaning of the Hyde Amendment, and will not file any claim
22 under that law to seek attorneys' fees for bringing the
23 dismissed charges against you.

24 Do you understand this?

25 THE DEFENDANT: Yes.

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1 THE COURT: Mr. Turner, in the plea agreement, it says
2 that Mr. Jaber cannot withdraw his plea even if he later learns
3 that the government withheld exculpatory material from him and
4 his counsel. Has the government withheld any such material?

5 MR. TURNER: No, your Honor.

6 THE COURT: Mr. Jaber, do you understand that under
7 the terms of the plea agreement, even if you later learn that
8 the government withheld from your counsel certain information
9 that would have been helpful to you in defending yourself at
10 trial, you will not be able to complain about that or withdraw
11 your guilty plea on that basis?

12 THE DEFENDANT: Yes.

13 THE COURT: Have you discussed this with your counsel
14 and do you understand what this means?

15 THE DEFENDANT: Yes.

16 THE COURT: The plea agreement also contains some
17 other provisions about arguments that you and the government
18 may make at the time of sentencing or upon discovery of new or
19 different information. Have you had an opportunity to discuss
20 all of these provisions of the plea agreement with your
21 attorney?

22 THE DEFENDANT: Yes.

23 THE COURT: Ms. Shroff, are there any other provisions
24 of the plea agreement that you would like me to go over with
25 your client?

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1 MS. SHROFF: No, your Honor. We reviewed the plea
2 agreement thoroughly and provided Mr. Jaber with a copy. So I
3 think he has all the information.

4 THE COURT: Mr. Turner, does the government want me to
5 review any additional terms of the plea agreement with Mr.
6 Jaber?

7 MR. TURNER: No, your Honor.

8 THE COURT: Mr. Jaber, have any promises been made to
9 you concerning the actual sentence you will receive to
10 influence you to plead guilty?

11 THE DEFENDANT: No.

12 THE COURT: Again, besides the plea agreement, have
13 any promises been made to influence you to plead guilty?

14 THE DEFENDANT: No.

15 THE COURT: Now that you have been advised of the
16 charges against you, the possible penalties you face, and the
17 rights you are giving up, is it still your intention to plead
18 guilty to Count Three of the indictment?

19 THE DEFENDANT: Yes.

20 THE COURT: Is your plea voluntary and made of your
21 own free will?

22 THE DEFENDANT: Certainly.

23 THE COURT: With respect to Count Three, how do you
24 plead, guilty or not guilty?

25 THE DEFENDANT: I am guilty.

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1 THE COURT: Tell me in your own words what you did
2 that makes you guilty of the crime charged in Count Three.

3 THE DEFENDANT: I introduced Fayad to them in his
4 capacity as a weapons merchant and I expect to get a
5 commission.

6 I had an agreement with other persons who told me that
7 FARC was a terrorist organization and that they were to receive
8 weapons, and I introduced Fayad to them for that purpose. I
9 was going to get a commission, as I said before.

10 THE COURT: So just to be clear, you entered into an
11 agreement with someone else to help provide support or
12 resources to FARC; is that correct?

13 THE DEFENDANT: That's correct.

14 THE COURT: Is it also correct that you knew FARC was
15 a terrorist organization, or had been designated as a terrorist
16 organization, at the time you entered into this agreement?

17 THE DEFENDANT: Yes.

18 THE COURT: Where were you when you entered into this
19 agreement?

20 THE DEFENDANT: In Ghana.

21 THE COURT: Did you understand that any of the conduct
22 would impact or occur in the United States?

23 THE DEFENDANT: Yes.

24 THE COURT: Ms. Shroff, are you contesting venue in
25 the Southern District of New York?

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1 MS. SHROFF: No, your Honor.

2 THE COURT: Mr. Jaber, I see that you have some notes
3 in front of you. Are those your own words? What you have told
4 me, are those your own words about what you have done?

5 THE DEFENDANT: Yes.

6 THE COURT: Did you know at the time that you engaged
7 in this conduct that it was wrong and against the law?

8 THE DEFENDANT: Yes.

9 THE COURT: Ms. Shroff, do you believe there is a
10 sufficient factual predicate for a guilty plea?

11 MS. SHROFF: I do, your Honor.

12 THE COURT: Are there any other questions that you
13 would like me to ask your client?

14 MS. SHROFF: No, your Honor.

15 THE COURT: Do you know of any defense that would
16 prevail at trial or other reason why your client should not be
17 permitted to plead guilty?

18 MS. SHROFF: No, your Honor.

19 THE COURT: Thank you.

20 Mr. Turner, do you believe there is a sufficient
21 factual predicate for a guilty plea?

22 MR. TURNER: I do, your Honor.

23 THE COURT: Are there any additional questions that
24 you would like me to ask the defendant?

25 MR. TURNER: No, your Honor.

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1 THE COURT: Does the government believe that it would
2 be able to prove guilt beyond a reasonable doubt?

3 MR. TURNER: Yes, your Honor.

4 THE COURT: Would you like to make a proffer?

5 MR. TURNER: Thank you, your Honor.

6 Your Honor, the government's proof in this case
7 includes, among other evidence, audio and video recordings of
8 meetings involving the defendant, co-conspirators and
9 confidential sources working for the DEA. It also includes
10 reported phone calls as well as text messages involving the
11 defendant, co-conspirators, and those DEA confidential sources,
12 search warrant returns for e-mail accounts used by the
13 defendant and co-conspirators, the contents of electronic
14 devices that were seized from the defendant and co-conspirators
15 at the time of arrest, documentary evidence, including wire
16 transfer and bank account records, as well as witness
17 testimony, including both law enforcement witnesses as well as
18 DEA confidential sources.

19 If this matter were to have proceeded to trial, the
20 government would prove, using that evidence, that between 2012
21 and 2014, the defendant engaged in a series of meetings in
22 locations, including Accra, Ghana, with individuals who
23 identified themselves as representatives and associates of the
24 FARC, but who were, in fact, DEA confidential sources. The
25 evidence would show that the FARC has been designated as a

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1 foreign terrorist organization by the U.S. Secretary of State
2 since 1997.

3 The evidence would further show that in the course of
4 those meetings, which were both audio and video recorded, the
5 defendant and two associates, a weapons trafficker based in the
6 Ukraine and a narcotics trafficker based in West Africa, agreed
7 to provide certain materials and services to the FARC; the
8 defendant and one associate agreed to supply weapons, including
9 surface-to-air missiles, for use by the FARC; and the defendant
10 agreed with another associate to assist the FARC with the
11 transportation and storage of cocaine, as well as with the
12 laundering of cocaine proceeds, including moving those proceeds
13 to a bank account in New York.

14 Finally, the evidence would show that after his arrest
15 the defendant was extradited and was first brought to the
16 Southern District of New York, with respect to venue as well as
17 jurisdiction.

18 Finally, Judge, the evidence would show that the
19 defendant acted knowingly and intentionally and that he did
20 know that what he was doing was unlawful.

21 THE COURT: Thank you, Mr. Turner.

22 On the basis of, Mr. Jaber, your responses to my
23 questions and my observations of your demeanor, I find that you
24 are competent to enter a guilty plea; I am satisfied that you
25 understand your rights, including your right to go to trial,

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1 that you are aware of the consequences of your plea, including
2 the sentence that may be imposed, and that you are voluntarily
3 pleading guilty, and that you have admitted that you are guilty
4 as charged in Count Three of the indictment; and for this
5 reason, I will recommend that the district judge accept your
6 plea.

7 Mr. Turner, will the government please order a copy of
8 the transcript and submit it to Judge McMahon together with any
9 additional paperwork so she may act on my recommendation?

10 MR. TURNER: Yes, Judge.

11 THE COURT: Has Judge McMahon set a sentencing date?

12 MR. TURNER: She has, your Honor. Judge McMahon set
13 November 8 at 4 p.m. as the sentencing date.

14 THE COURT: I will also direct that a presentence
15 report be prepared.

16 Mr. Turner, can you deliver a case summary within 14
17 days?

18 MR. TURNER: Yes, your Honor.

19 THE COURT: Ms. Shroff, will you be able to meet with
20 your client and probation within the next two weeks or so?

21 MS. SHROFF: Yes, your Honor.

22 THE COURT: Are there any other items that the
23 government would like to raise at this time?

24 MR. TURNER: No, your Honor.

25 THE COURT: Ms. Shroff, anything else that you would

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1 like to raise at this time?

2 MS. SHROFF: Your Honor, may I just have a second?

3 Your Honor, I will follow up with a letter to Judge
4 McMahan, but because Mr. Jaber has entered a guilty plea,
5 sometimes the marshals move him; and given that he is in the
6 chronic care unit at MCC and he takes a whole slew of
7 medications, I am just going to request on the record that if
8 government counsel can assist us in keeping Mr. Jaber at the
9 MCC, that he do so.

10 Thank you.

11 THE COURT: Mr. Turner, does the government want to
12 respond?

13 MR. TURNER: Your Honor, perhaps it would make sense
14 for the government to speak with defense counsel about the
15 request, and to the extent the parties are not on the same
16 page, a letter can be submitted to the district judge.

17 THE COURT: All right. What I would direct is that,
18 to the extent possible, that the government take into
19 consideration the care that Mr. Jaber is receiving so that he
20 can have continuity of care to the greatest extent possible.

21 MR. TURNER: Yes, your Honor.

22 THE COURT: Thank you. Anything else?

23 MS. SHROFF: No, your Honor. Thank you.

24 THE COURT: Have a good afternoon.

25 (Adjourned)